Special: **Circuit Court Upsets Brownell Red Hunt Plans, See Page 3**

I. F. Stone's Weekly

WASHINGTON, D. C. 15 CENTS VOL. II, NUMBER 33 SEPTEMBER 20, 1954

The G.O.P. Prepares to "Run" The Late Harry White

Under Mr. Brownell, the Department of Justice has been elevated to an arm of the Republican National Committee. The morning after the Maine elections, the Department sought to steal the headlines from the Democrats and cheer up the dispirited Republicans by leaking a detailed story to the Washington *Evening Star* on the indictments it hopes to get from the special grand jury impanelled recently in the capital.

Grand jury proceedings are supposed to be secret but someone in the Department seems to have discussed with the *Star's* reporter a long list of persons, many of them associated with the late Harry Dexter White whom it hopes to indict. The *Star* is not the kind of paper which would print this sort of thing without being certain of its source. The "leak" and the names, the links with Chambers and Bentley, indicate that "20 Years of Treason" will be the theme song of the compaign.

The leak recalls similar leaks from the Department of Justice with which the Democrats hoped in 1948 to demoralize the Wallaceites. At that time, with the same Bentley and Chambers testimony available, grand jury proceedings failed to live up to the advance headlines and the government had to be satisfied as a consolation prize with the indictment of the 12 top American Communists for "conspiracy to advocate." Perhaps the government will do better this time.

In the story leaked to the *Star*, emphasis was placed on the new immunity law as a means of forcing witnesses to talk. But those accused may have nothing to tell about crimes, may have nothing to hide but political associations now regarded as criminal. The *Star* says that under the new law making death the penalty for espionage in peacetime, the government can rehash pre-war stories a la Chambers. But this is an error. The new law did not amend the statute of limitations, and does not allow the prosecution of crimes on which the statute has already run.

The real weapons in the hands of the government are those new laws which permit even native born Americans to be stripped of their nationality for "conspiracy to advocate" and to be deported (or placed under lifetime parole as second class citizens) for past membership in the Communist party. These are weapons of terror and squeeze with which the government may manufacture new informers, prepared to testify as required in return for protection. From this quarter surprises are possible.

The Republicans are desperate. They feel themselves a minority party. They must defame and destroy the memory of New Deal and Fair Deal. They need sensations, and if not sensations then at least victims. "Warmed over spy," the promised *piéce de resistance* of the campaign, is made the more necessary by the unexpected action of the U. S. Court of Appeals in the District of Columbia last week (*see page three*) which has upset plans for using the new anti-Communist law.

If nothing else, the Department may produce another indictment in the Lattimore case, which is becoming the *perpetuum mobile* of American jurisprudence. It can send to jail for contempt a few people who will refuse to talk, despite proferred immunity. At the very least it can hope for an indictment good enough to hold up sensational headlines until after election. The next few weeks will see the Republicans use grand juries and courts as instruments of publicity and politics for campaigning purposes. And in one respect, Eisenhower, Nixon and Brownell will certainly succeed. This is in their anxiety to prove that the Administration can do just as good a job, or better, than McCarthy.

A Dangerous Time and Place for "Guessing"

The fact that the Republicans are beginning to run not just "scared" but frantic adds to the precarious character of the situation in the Far East. There is little reason to believe that the Chinese Communists are "bluffing" about Formosa. They have been building up a popular campaign which can hardly be thrown into reverse even by a total distatorship without serious consequences. No doubt the Russians would like to hold the Chinese back, but they cannot give orders to Peking.

The situation is made the more serious because of the confusion in American policy on Formosa. At one moment Washington says that Formosa is necessary to America's strategic defenses. At the next, we speak of Formosa as a jumping off place for the "liberation" of China. These are different propositions. On the other side of the Pacific, the former may look as ludicrous as if the Russians claimed Catalina Island as necessary to *their* defenses. Yet America, like Japan, might "get away with" the long-time occupation of Formosa.

But it is impossible to have peace in the Far East while arming, supplying, directing and protecting a rival rump Chinese government in persistent attacks upon the mainland. That way lies war, whether it is precipitated at Big or Little Quemoy, or on Formosa itself. The Administration would rather have a balanced budget than war with China, but what if it thought just a little fighting at Quemoy might help the election? This is the really serious guessing in this childish guessing game. The 7th Fleet has orders to give Chiang "logistic support" only at Quemoy, but what if more Americans are killed, or American naval vessels bombed in the fighting? Is Chiang guessing that this might draw us at last into the war he has long wanted?

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

The 5th Amendment Senator Makes A "1st Amendment" Plea

The main "contempt" charge against McCarthy is that six times he refused to answer questions put by the Gillette-Hennings subcommittee in 1952. McCarthy's principal defense is that his refusal to answer cannot be considered contempt because (in his opinion) the subcommittee was exceeding its lawful powers. This argument implies in turn that the Senate will not vote a contempt citation merely on a committee's say-so but will examine the facts independently

But this, as Senator Case—a member of the Watkins committee—was quick to point out, was exactly the defense McCarthy and his supporters rejected when the contempt resolutions against Corliss Lamont, Abraham Unger and Albert Shadowitz came up in the Senate two weeks earlier.

McCarthy's leading supporter in the debate, Senator Morse, then argued (see box at the bottom of this page) that it was the Senate's duty to vote any contempt resolution for which one of its committees had made out a prima facie case. Thereupon the Senate voted the resolutions with but one dissenter (Lehman) on Shadowitz and Unger and but three (Lehman, Langer and Chavez) on Lamont.

Like the Harvey O'Connor Case

In all three the defense will be that no contempt was committed because (1) the questions they refused to answer were outside the orbit of the powers conferred on the McCarthy committee by the Senate, and (2) invaded rights guaranteed by the First Amendment.

In the Shadowitz case, the McCarthy committee claimed to be investigating possible espionage in the Federal Telecommunication Laboratories. Shadowitz refused to answer questions about his political views and associations on First Amendment grounds, citing the advice given him by Einstein. He also objected to questions about espionage on the ground that such matters were outside the McCarthy committee's authority under the 1946 statute establishing it.

Nevertheless—a fact few papers reported—Shadowitz did say under oath, "I never in any way violated any of of the security regulations" and "I have never engaged in espionage . . . I am not aware of espionage on anyone else's part. . ."

"Efficiency" Uber Alles

When the Shadowitz resolution came up, Senator Case pointed out that under the 1946 act authority over all matters "relating to bankruptcy, mutiny, espionage and counterfeiting" was given the Senate Judiciary Committee. McCarthy, in reply, claimed that if a government department hired anyone guilty of espionage or unwilling to answer questions about espionage, that was evidence of inefficiency. And his committee on government operations *is* empowered to investigate all questions of efficiency.

The same argument would enable the McCarthy committee to invade the province of the Senate Finance Committee or the Joint Congressional Committee on Atomic Energy or almost any Senate committee. McCarthy might ask whether Treasury tax rates were being framed efficiently and whether the Atomic Energy Commission was handling the atom bomb efficiently

The Unger case involved the same issue in a different form. Abraham Unger, a New York lawyer, was subpoenaed by McCarthy. The hearing was on Communist infiltration into the American staff of the United Nations. This was itself an invasion (for headline getting purposes) of the jurisdiction of the Internal Security subcommittee and the Foreign Relations committee. Unger was asked about a United Nations employe who was for a time employed by him to do legal research in connection with the first Smith Act prosecution of the 11 top Communist leaders. Unger answered all questions asked about this employe but declined to answer questions about his own political views and associations.

The Issue in the Lamont Case

". . . whether if the Senator or I should write a book or make a speech, and the Government should use a paragraph from the speech or from the book with the idea of instructing the military or some other subdivision of the Government, we could then be subpoenaed before a committee and ordered to answer questions concerning our personal views. That, as I understand it, is the issue raised by Lamont in this instance."

—Sen. Saltonsall (R. Mass.), Con. Rec. Aug. 16 p. 13969.

". . . the inquiry which was conducted had absolutely nothing whatever to do with the legitimate field of inquiry of a congressional committee. None of the questions which Mr. Lamont was asked bear in the slightest degree on his participation in a conspiracy."

—Sen. Lehman (D. N.Y.) same p. 13968

Strange Alliance

The shocking aspect of the debate on Lamont was the way in which Morse took over McCarthy's defense against the attack launched by Lehman and Langer. As the debate neared its close, the Independent from Oregon turned to McCarthy and said, "this is but another illustration of the consistency of the Senator from Oregon in protecting procedural rights." He recalled that "on the floor of the Senate not so many nights ago I sought to protect the Senator from Wisconsin from the standpoint of procedure" (Con. Rec. P. 13975). The reference was to the fact that Morse had helped to defeat the censure resolution against McCarthy.

But this Galahad of due process had no difficulty in swallowing what Langer assailed as the most unfair aspect of the Lamont case. Lamont testified in executive session and was then subpoenaed for a public session. When this met, McCarthy first explained to the Senate, "I called to see if he (Lamont) was in the room, knowing that he had been notified that he could purge himself of contempt on that day, if he wanted to do so, and that if he did not want to do so, his case citing him for contempt would be submitted to the Senate." (Con. Rec. p. 13,963).

Langer protested that Lamont had been informed three days earlier by telegram that his public hearing had been indefinitely postponed. When Morse, too, asked why Lamont had not been notified and given a chance to come in and purge himself, Slippery Joe reversed himself and said, "He had no right to come before the committee and purge himself of contempt." (Con. Rec. p. 13972). No one challenged McCarthy on the contradiction, but this failure to notify is the kind of procedural error on which Lamont may win in the courts.

Should the Senate Rubber-Stamp McCarthy Contempt Citations?

Morse said "Yes": "I say to the Senator from Wisconsin that I have never voted against a contempt citation resolution in the Senate . . . I think we, as Senators, owe it to our committees to support them when they come to the floor of the Senate and make a prima facie case in support of a contempt citation." *(Con. Rec. p. 13971).*

Lehman said "No": "I can very well understand that an inimical or unfriendly committee could ask a witness questions which for many good reasons he could properly refuse to answer. Yet, if we agree with a committee every time it asks us to cite a witness for contempt of the Senate, without carefully scrutinizing the facts in the case, we would be laying ourselves open to a dangerous course of action, to which I would not be willing to subscribe." *(Con. Rec. pps. 13972-3).*

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

The Communists Aren't The Only Ones "Off Balance"

Circuit Court of Appeals Upsets Brownell's Plans

Attorney General Brownell had hardly finished boasting to his fellow members of the General Society of Mayflower Descendants at Plymouth last Monday that he had the Communist conspiracy "off balance"* when the Circuit Court of Appeals in the District of Columbia threw the Department of Justice off balance in its plans for a pre-election Red hunt.

Use of the new anti-Communist law against individuals and Communist "infiltrated" labor unions depends on the case argued by the government last April before the Circuit Court of Appeals ordering the Communist Party to register under the Internal Security Act of 1950. The new legislation hectically passed by Congress in its closing hours took the final form of an amendment to that Act. The whole structure would collapse were the Circuit Court to rule against the constitutionality of the registration order.

What Right Wingers Feared

A decision had been long expected when the Circuit Court last week took the unusual step of reopening the case for argument on its own motion. The court's order confirmed the fears of right-wingers who opposed this new legislation in Congress, though as fearful as the liberals of actually voting against anything labelled anti-Communist. One of the two points on which the Circuit Court wants to hear argument is "the effect, if any, of the Communist Control Act of 1954" upon the case.

The other point shows the new legislation has already had its effect. The government last April argued that only a registration order was before the court, that this was not an outlawry measure and that it was unnecessary therefore to argue whether it constituted an infringement of free speech. The new amendments make this all the more difficult to maintain.

The court has in effect rejected the government's contention by asking argument on "the validity of the Internal Security Act of 1950 if it be deemed to be not merely a registration statute, i.e. if it be considered as an integrated whole, including the so-called sanctions provisions . . ." This was how the late Vito Marcantonio (with John J. Abt and Joseph Forer assisting) argued the case last April. The government will now be forced to answer the defense claim that this in effect outlaws the Communists and is unconstitutional in that it imposes criminal sanctions for political activities which (as the government admits**) may not be criminal.

New Move Against Informers

At the same time, in another blow at the government's plans for swift and sensational prosecutions, the Court granted a second defense motion to reopen the case for new evidence. This motion called the Court's attention to the extent of the government's dependence in the case on three informers whom it has since ceased to employ. They are Paul Crouch, Manning Johnson and Harvey Matusow. The first two have been dropped from the government payroll after their contradictions became too notorious. The last, Matusow, seems to have repented and is trying to find a market for a book entitled "Blacklisting (or Blackmailing) Was My Business."

No Action Yet On Bunche's Accuser

The defense motion points out that the chairman of the International Organizations Employe Loyalty Board in the Ralph J. Bunche case has asked that Johnson's exploded testimony against Dr. Bunche be investigated by the Department for perjury. The airing given Paul Crouch's perjuries by the Alsop brothers led the Department last May 28 to cancel his scheduled appearance as a witness before the Subversive Activities Control Board against the Veterans of the Abraham Lincoln Brigade. Crouch in an angry letter to J. Edgar Hoover demanded an investigation of the Attorney General's office and predicted that the promised inquiry into his credibility would upset some 60 Communist prosecutions, including the one before the Circuit Court of Appeals.

Circuit Court Judges Prettyman, Bazelon and Danahar set October 21 as the date for argument on both the new tainted informer evidence and on the two legal points specified. Briefs must be filed by October 8 and reply briefs by October 19.

Democratic Strategy May Boomerang

The reopening of the Communist case may turn the Democratic anti-Communist maneuver into a political boomerang, since the effect of the new legislation is to slow up and hamper, perhaps to wreck, much of the Red hunt. The Republicans may now argue that their more carefully drawn legislation as enacted in 1950 was ruined by the Democratic sponsored "outlawry" amendments.

The government's greatest difficulty may lie in Section 5 of the new law (see official text as published here last week) —the so-called "Humphrey-Morse" amendment. This sets forth standards for determining who is a Communist—and therefore subject to prosecution for failure to register. These are so vague and sweeping that as the *New York Post* pointed out it could be used to proscribe Humphrey and Lehman as vice-presidents of Americans for Democratic Action.

Labor Union Cases May Be Delayed

Until the registration order against the Communist party has finally been upheld, the government cannot prosecute individual Communists for failure to register. It will also be difficult to proceed against labor unions for the lesser offense of being "Communist infiltrated" until the Courts have decided the basic case against the Communist party. The Democrats may now find themselves attacked in paranoid terms for "sabotaging" the Red hunt.

*** The speech, turgid even for Mr. Brownell, was noteworthy chiefly for a cryptic passage in which he seems to imply that Communist conspirators are also responsible for juvenile revolt against parental authority, a phenomena hitherto thought to antedate the establishment of the Cominform. "We have seen them," Mr. Brownell told the Mayflower descendants, "seek to increase the rebellious spirits of children against constituted authority." No doubt the FBI has found traces of Marx in Mother Goose.**

**** ". . . petitioner can validly be required to register if in fact it does act pursuant to and in furtherance of the world Communist organization, even though every act it actually did pursuant to such directives or in furtherance of such objectives was innocent."—p. 72, brief for the government, *Com. Party v. Subversive Activities Control Board.***

Vol. II, Number 33 September 20, 1954

I. F. Stone's Weekly

• ***Editor and Publisher*, I. F. STONE**

Published weekly except the last two weeks of August at Room 205, 301 E. Capitol St., S.E., Washington 3, D. C. Subscription rates: Domestic, $5 a year; Canada, Mexico and elsewhere in the Western Hemisphere, $6; England and Continental Europe, $10 by 1st class mail, $15 by air; for Israel, Asia, Australia and Africa, $10 by first class mail, $20 by air mail. Single copy, 15 cents. Tel.: LI 4-7087. Entered as Second Class mail matter, Post Office, Washington, D. C.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Peeping Over The Shoulders of The World's Editors

NEWS THE WELL-BEHAVED PAPER DOESN'T PRINT: FDR, Jr.'s unmentionable difficulty in New York is that the "Power House" (political slang for Cardinal Spellman's official residence) has turned thumbs down on him. The Cardinal, like the rest of the East Coast hierarchy, hated the father and fears the magic of the name in the son . . . REPUBLICAN GENERAL BITES FASCIST DOG BUT FAILS TO MAKE NEWS: General Jose Asensio, Assistant Secretary of War in the Spanish Republic, testified unnoticed before the Subversive Activities Control Board in New York last week as the first witness for the defense of the Veterans of the Abraham Lincoln Brigade . . . ITEM YOU WON'T FIND IN THOSE EDITORIALS ON THE MENACE OF TOTALITARIANISM TO THE RIGHT TO WORSHIP GOD AS YOU PLEASE: "Spain Ignores U.S. Protest, Keeps Baptist Church Shut" (AP from Madrid, Sept. 13) . . .

NEWS IT WAS THOUGHT JUST AS WELL TO IGNORE: The New York *Herald-Tribune* September 13 (p. 4) carried a London Observer Foreign Service dispatch from Taipeh, Chiang's capital, "Traits of Police State Are Found on Formosa." But the same dispatch published by the *Jerusalem Post* September 10 shows the New York paper omitted (1) that Chiang's new Acting Chief of the General Staff, Lieut. Gen. Peng Meng-chi "is not considered one of the Nationalists' most capable military leaders," but was formerly a "top echelon anti-subversion policeman" and (2) that Chiang's troops are not only unready for any attack on the mainland but "it is doubtful whether they are fully prepared to put up even an effective defense of their island base . . ."

NO PATRIOTIC DENUNCIATIONS came from the rightist press when the Circuit Court of Appeals in New York recently reversed the conviction for treason of John David Provoo, who collaborated with the Japanese during the war and broadcast for them from Tokyo. Nor did anyone call for the disbarment of the lawyers the Court praised for defending him without compensation, nor cite this as an example of the need for a stronger treason amendment, along the lines of the anti-Left proposals which died in the last session of Congress . . .

WATCH FOR THE CAMPAIGN OF HATE which will be whipped up when Alger Hiss leaves Lewisburg Penitentiary November 27. Ruth Montgomery's column in the New York *Daily News* September 11 dealt with the forthcoming release of "the most notorious traitor since Benedict Arnold." Doubleday and other publishers will be pressured not to publish the book Hiss has been preparing in his own defense. The vested interest of the right, the Republicans and the FBI in the Hiss case and "Yalta" is enormous and crucial . . . BLACKMAIL: "One of McCarthy's Senate foes has a brother (working on atomics) who often entertained Alger Hiss"—Walter Winchell, New York *Mirror*, Sept. 13 . . .

ANOTHER KIND OF INFLATION: The *Chicago Tribune* correspondent in Saigon reported in last Wednesday's issue that Viet-Namese figures on the refugees "fleeing slavery" in the Northern part of the country were "'blown up by including military outfits in the effort to show that the people prefer the anti-Communist south." He gave the Viet-Namese totals as 200,000; the local American estimate at 74,000 . . .

NEW RECRUIT FOR THE NEW HOLY ALLIANCE: The Ottawa correspondent of the *Washington Star*, reporting September 12 on the bitter reaction among Canadian war veterans over the freeing of Nazi Gen. Kurt Meyer, who ordered at least 144 Canadian prisoners of war murdered, says: "Canadian staff officers visited him in prison seeking advice on how to fight Russians" and notes that the Canadian government has "consistently sidestepped answering" in Parliament whether Meyer is "as has been hinted, earmarked to serve in a new Wehrmacht to defend Western democracy."

THE "FACTS" AS GIVEN BY FACTS FORUM: Sample of impartial presentation by Facts Forum from latest report by Congressman Hays (*D., Ohio*): "Today, all over the globs, people are promoting the philosophy of government which they like to call liberal and progressive, but which in its essence is a return to the dark ages . . . It is a philosophy which holds that government has the power and responsibility to do something for the people . . ." PORTRAIT OF AN OFFICIAL TALKING TO HIMSELF ON A STOCKPILE OF A AND H BOMBS: "I deeply believe that the Creator did not intend for man to evolve through the ages up to this point only now to destroy himself." (AEC Chairman Lewis L. Strauss, breaking ground for first full-scale nuclear power plant, Sept. 6). A little more such loose talk and Strauss is liable to lose his clearance for moral scruples . . . NEWS WE DIDN'T SEE ELSEWHERE: "Stockholm, Aug. 31—The Foreign Ministers of Sweden, Norway, Denmark and Iceland called today for the admission of Communist China to the United Nations."—AP in London *Times*, Sept. 1 . . .

ON THE RIGHT TO TRAVEL

Next week's issue will carry a full report on two key passport cases now in the Federal district court in Washington, one brought by Federal Judge William Clark, the other by Dr. Otto Nathan.

LET US SEND A SAMPLE COPY TO A FRIEND

I. F. Stone's Weekly, 301 E. Capitol, Wash. 3, D. C.

Please renew (or enter) my sub for the enclosed $5:

Name_____

Street_____

City_____ **Zone**_____ **State**_____

Enter this gift sub for $4 more (money enclosed):

(To) Name_____

Street_____

City_____ **Zone**_____ **State**_____

9-20-54

I. F. Stone's Weekly
Room 205
301 E. Capitol St., S.E.
Washington 3, D. C.

NEWSPAPER

Entered as
Second Class Mail
Matter
Washington, D. C.
Post Office

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED